

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

Elena del Campo, et al.,

NO. C 01-21151 JW

Plaintiffs,

v.

American Corrective Counseling Services,  
Inc, et al.,

Defendants.

**ORDER DENYING PLAINTIFFS'  
IMPLIED MOTION TO BIFURCATE  
CLASS CERTIFICATION; DIRECTING  
PLAINTIFFS TO FILE SUPPLEMENTAL  
MOTION FOR CLASS CERTIFICATION  
UNDER FED. R. CIV. P. 23(b)(3)**

On September 15, 2008, the Court held a hearing on Plaintiffs' Amended Motion for Class Certification. The Court raised an issue with respect to the absence of a Fed. R. Civ. P. 23(b)(3) damages class in Plaintiffs' Motion. Plaintiffs contend that the reason Plaintiffs did not move to certify a damages class was because there is a possibility that Defendants may not be able to pay any potential judgment. The Court construed Plaintiffs' statement as an implied motion to bifurcate class certification. The Court took the matter under submission.

Upon consideration, the Court DENIES Plaintiffs' implied motion to bifurcate class certification between liability, and injunctive and declaratory relief under Rule 23(b)(2) and damages under Rule 23(b)(3). Fed. R. Civ. P. 23(b)(2-3). The Court finds Plaintiffs' contention regarding whether Defendants may or may not be able to pay too speculative and insufficient to certify the class at two separate periods; judicial economy weighs in favor of completing the certification all at once rather than the piecemeal approach proposed by Plaintiffs.

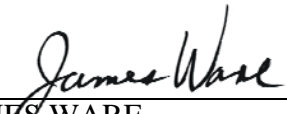
1 Thus, in light of the fact that Plaintiffs have not moved for class certification under Rule  
2 23(b)(3), the Court gives Plaintiffs an opportunity to file a Supplemental Motion for Class  
3 Certification, in which Plaintiffs may move to certify a Rule 23(b)(3) damages class to be considered  
4 alongside Plaintiffs' pending Motion for class certification under Rule 23(b)(2).

5 Accordingly, the Court sets an expedited briefing schedule for the issue of Plaintiffs'  
6 putative 23(b)(3) damages class as follows:

- 7 (1) On or before **September 26, 2008**, Plaintiffs shall file and serve their Supplemental  
8 Motion for Class Certification to include, if any, a damages class under Rule  
9 23(b)(3);  
10 (2) Defendants' Opposition, if any, shall be filed and served on or before **October 3,**  
11 **2008**;  
12 (3) Plaintiffs' Reply, if any, shall be filed and served on or before **October 8, 2008**.

13 The Court will take the matter under submission without oral argument.

14  
15 Dated: September 19, 2008

  
\_\_\_\_\_  
JAMES WARE  
United States District Judge

**THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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**Dated: September 19, 2008**

**Richard W. Wieking, Clerk**

**By: /s/ JW Chambers**  
**Elizabeth Garcia**  
**Courtroom Deputy**